

STAFF Draft 06/19/2000
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Subpart A - General Provisions

33.101 What are the objectives of this Part?

This Part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award of contracts under EPA financial assistance agreements;
- (b) To create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts awarded under EPA financial assistance agreements;
- (c) To ensure that EPA's DBE Program is narrowly tailored in accordance with applicable law;
- (d) To help remove barriers to the participation of DBEs in the award of contracts under EPA financial assistance agreements; and
- (e) To provide appropriate flexibility to recipients of EPA financial assistance in establishing and providing contracting opportunities for DBEs.

33.102 When do the requirements of this Part apply?

The requirements of this Part apply to procurement under EPA financial assistance agreements performed entirely within the United States, its territories and possessions, whether by a recipient or its prime contractor, for construction, equipment, services and supplies.

33.103 What do the terms in this Part mean?

- (a) Terms not defined below shall have the meaning given to them in 40 CFR Part 30, Part 31 and Part 35 as applicable.

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(b) As used in this Part, the following terms mean:

(1) **Availability Analysis.** Documentation of the availability of MBEs and WBEs in the recipient's relevant geographic market in relation to the total number of firms available in that area.

(2) **Award Official.** The EPA Regional or Headquarters official delegated the authority to approve and execute financial assistance agreements on behalf of EPA.

(3) **Business, Business Concern or Business Enterprise.** An entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor.

(4) **Construction.** Erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property and activities in response to a release, or a threat of a release of a hazardous substance into the environment.

(5) **Disadvantaged Business Enterprise (DBE).** An entity owned and/or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. §4370d) or Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. §7601 note), a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF) or a Small Business in a Rural Area (SBRA).

(6) **Disabled American.** A disabled American means, with respect to an individual, permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(7) **Disparity Study.** A comparison within the preceding ten years of the available MBEs and WBEs in a relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services and supplies.

(8) **Equipment.** Items procured under a financial assistance agreement as defined by

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applicable regulations for the particular type of financial assistance received.

(9) **Fair Share Goal.** A goal negotiated by EPA and a recipient expressing the percentage of MBE or WBE utilization expected absent the effects of discrimination.

(10) **Financial Assistance Agreement.** Grants or cooperative agreements awarded by EPA. The term includes grants or cooperative agreements used to capitalize revolving loan funds, including, but not limited to, the Clean Water State Revolving Loan Fund (CWSRF) program under Title VI of the Clean Water Act, as amended, 33 U.S.C. §1381 et seq., the Drinking Water State Revolving Fund (DWSRF) program under section 1452 of the Safe Drinking Water Act, 42 U.S.C. §300j-12, and the Brownfields Revolving Fund program under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9604.

(11) **Good Faith Efforts.** The race and/or gender neutral measures described in Subpart C of this Part.

(12) **Historically Black College or University (HBCU).** An institution determined by the Secretary of Education to meet the requirements of 34 CFR Part 608.

(13) **Identified Loan.** A loan project funded under an EPA financial assistance agreement to capitalize a revolving loan fund, which:

(a) In the case of the CWSRF or DWSRF programs, is a project funded from amounts equal to the capitalization grant and has been specified in a recipient's Intended Use Plan; or,

(b) In the case of the Brownfields Revolving Loan program, is a project that has been funded with Federal financial assistance.

(14) **Joint Venture.** An association of two or more concerns to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge.

(15) **Labor Surplus Area Firm (LSAF).** A concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR Part 654). Performance is

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substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

(16) **Minority Business Enterprise (MBE).** A Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women's Business Enterprise (WBE).

(17) **Minority Institution.** An institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. §1135d-5(3)).

(18) **Recipient.** An entity that receives an EPA financial assistance agreement.

(19) **Services.** A contractor's labor, time or efforts which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawings, specifications).

(20) **Small Business, Small Business Concern or Small Business Enterprise (SBE).** A concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR Part 121.

(21) **Small Business in a Rural Area (SBRA).** A small business operating in an area identified as a rural county with a code 6-9 in the Rural-Urban continuum Classification Code developed by the United States Department of Agriculture in 1980.

(22) **Supplies.** Items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.

(23) **Women's Business Enterprise (WBE).** A business concern which is more than 50 percent owned and/or controlled by women. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50 percent interest in her share. Similarly, a business concern which is more than 50 percent owned by a married man will not become a qualified WBE by virtue

of his wife's 50 percent ownership of the business concern.

33.104 May a recipient apply for a waiver from the requirements of this Part?

A recipient may apply for a waiver from any of the requirements of this Part that are not based on a statute or Executive Order, by submitting a written request to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU). The request must document special or exceptional circumstances that make compliance with the requirement impractical, including a specific proposal addressing how the recipient intends to achieve the objectives of this Part as described in 33.101. The recipient must agree to take any steps that the OSDBU Director specifies in his/her written response to the waiver request. The Director of OSDBU may end or extend a waiver at any time.

§33.105 What are the compliance and enforcement provisions of this Part?

If a recipient fails to comply with any of the requirements of this Part, EPA may take remedial action under 40 CFR Parts 30, 31 or 35, as appropriate, or any other action authorized by law, including, but not limited to, enforcement under 18 U.S.C. §1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §3801 et seq.).

§33.106 What assurances must contractors make?

The recipient must ensure that each procurement contract it awards contains the term and condition specified in the Appendix concerning compliance with the requirements of this Part. The recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

Subpart B - Certification

§33.201 What does this Subpart require?

(a) In order to participate under EPA's DBE Program, an entity must be properly certified.

(b) EPA's DBE Program is primarily based on two statutes. Public Law 102-389, 42

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U.S.C. §4370d, provides for an 8% goal for awarding contracts under EPA financial assistance agreements to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals, including HBCUs and women (“EPA’s 8% statute”). Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. §7601 note, provides for a 10% goal for awarding contracts under EPA financial assistance agreements for research relating to such amendments to business concerns or other organizations owned and controlled by socially and economically disadvantaged individuals (“EPA’s 10% statute”).

§33.202 How does an entity become certified under EPA’s 8% statute?

(a) *Ownership or control.* An entity must establish that it is owned or controlled by socially and economically disadvantaged individuals. “Ownership” and “control” shall have the same meanings as set forth in 13 CFR §124.105 and 13 CFR §124.106, respectively.

(b) *Socially disadvantaged individual.* A socially disadvantaged individual is a person who has been subjected to racial or ethnic or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of Section 8(a)(5) of the Small Business Act (15 U.S.C. §637(a)(5); 13 CFR §124.103).

(c) *Economically disadvantaged individual.* An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by the implementing regulations of Section 8(a)(6) of the Small Business Act (15 U.S.C. §637(a)(6); 13 CFR §124.104).

(d) *HBCU.* An HBCU automatically qualifies as an entity owned or controlled by socially and economically disadvantaged individuals.

(e) *Women.* Women are automatically deemed to be socially and economically disadvantaged individuals. Ownership or control must be demonstrated pursuant to subparagraph (a) above, which may be accomplished by self-certification under §33.204(b).

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§33.203 How does an entity become certified under EPA's 10% statute?

An entity must establish that it is owned and controlled by socially and economically disadvantaged individuals.

(a) *Ownership and control.* An entity must be at least 51% owned by a socially and economically disadvantaged individual, or in the case of a publicly traded company, at least 51% of the stock must be owned by one or more socially and economically disadvantaged individuals, and the management and daily business operations of the business concern must be controlled by such individuals.

(b) *Socially disadvantaged individual.* A socially disadvantaged individual is a person who has been subjected to racial or ethnic or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of Section 8(a)(5) of the Small Business Act (15 U.S.C. §637(a)(5); 13 CFR §124.103).

(c) *Economically disadvantaged individual.* An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by the implementing regulations of Section 8(a)(6) of the Small Business Act (15 U.S.C. §637(a)(6); 13 CFR §124.104).

(d) *Presumptions.* Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women and Disabled Americans are presumed to be socially and economically disadvantaged individuals. The following institutions are presumed to be entities owned and controlled by socially and economically disadvantaged individuals: HBCUs, colleges and universities having a student body in which 40% of the students are Hispanic, Minority Institutions and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

(e) *Individuals not members of designated groups.* Nothing in this section shall prohibit any member of a racial or ethnic group that is not designated as socially and economically disadvantaged under subparagraph (d) of this section from establishing that they have been impeded in developing a business concern as a result of racial or ethnic discrimination.

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(f) *Rebuttal of Presumptions.* The presumptions established by subparagraph (d) of this section may be rebutted with respect to a particular entity if it is reasonably established that the individual at issue is not experiencing impediments to developing such entity as a result of the individual's identification as a member of a specified group.

(g) *Joint Ventures.* (1) A joint venture may be considered owned and controlled by socially and economically disadvantaged individuals, notwithstanding the size of such joint venture, if a party to the joint venture is an entity that is owned and controlled by a socially and economically disadvantaged individual.

(2) A person who is not an economically disadvantaged individual or an entity owned and controlled by a socially and economically disadvantaged individual, as a party to a joint venture, may not be a party to more than two awarded contracts in a fiscal year solely by reason of subparagraph (g)(1) of this section.

§33.204 Where does an entity become certified under EPA's 8% and 10% statutes?

(a) EPA will not certify entities as owned and/or controlled by socially and economically disadvantaged individuals. A recipient shall accept current certifications by:

(1) The Small Business Administration (SBA), under its 8(a) Business Development Program or its regulations relating to Federal Small Disadvantaged Business Programs, 13 CFR Part 124;

(2) Department of Transportation (DOT), under its program for Participation by Disadvantaged Business Enterprises in DOT Programs, 49 CFR Parts 23 and 26; or

(3) A State, local, or Indian Tribal Government or private certifier, in accordance with EPA's 8% or 10% statutes, as appropriate.

(b) Under EPA's 8% statute, a recipient shall accept self-certification by women regarding ownership or control of an entity. Under EPA's 10% statute, a recipient shall accept self-certification by women regarding ownership and control of an entity by socially and economically disadvantaged individuals.

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§33.205 What conduct is prohibited by this Subpart?

An entity that does not meet the eligibility criteria of this Subpart may not attempt to participate as a DBE in contracts awarded under EPA financial assistance agreements. An entity that submits false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty may be subject to sanctions under §33.105 of this Part.

Subpart C - Good Faith Efforts

§33.301 What does this Subpart require?

A recipient is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share goals under Subpart D:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For State, local and Indian Tribal Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information of forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For State, local and Indian Tribal Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of Department Commerce.

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(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in subparagraphs (a)-(e) of this section.

§33.302 Are there special rules for loans under financial assistance agreements?

A recipient of a financial assistance agreement to capitalize a revolving loan fund must require entities receiving identified loans to comply with the good faith efforts described in section 33.301.

§33.303 Are there any additional contract administration requirements?

(a) A recipient must consent in writing prior to any termination of a DBE subcontractor for convenience by its prime contractor.

(b) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the good faith efforts described in §33.301 in soliciting a replacement subcontractor.

(c) A recipient must require its prime contractor to employ the good faith efforts described in §33.301 even if it has achieved its fair share goals under Subpart D.

Subpart D - Fair Share Goals

§33.401 What does this Subpart require?

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share goals for MBE and WBE participation in procurement under the financial assistance agreements.

§33.402 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize revolving loan funds must either apply its own fair share goals negotiated with EPA under section 33.401 of this Part to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share goals with entities receiving identified loans, as long as such separate goals are based on demonstrable evidence of availability of MBEs and WBEs in accordance with this Subpart.

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§33.403 What is a fair share goal?

A fair share goal is a percentage based on the availability of qualified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services and supplies compared to the number of all qualified entities in the same market for the same procurement categories, adjusted to reflect the level of MBE and WBE participation expected absent the effects of discrimination. A fair share goal is not a quota.

§33.404 When must a recipient negotiate fair share goals with EPA?

A recipient must submit its proposed MBE and WBE fair share goals and supporting documentation to EPA within 90 days of its acceptance of its financial assistance award. MBE and WBE fair share goals must be agreed upon by the recipient and EPA before funds may be expended for procurement under the recipient's financial assistance agreement.

§33.405 How does a recipient determine its fair share goals?

(a) A recipient must determine its fair share goals based on demonstrable evidence of the number of qualified MBEs and WBEs in the relevant geographic market for each of the four procurement categories. The relevant geographic market is the area of solicitation for the procurement as determined by the recipient. The market may be a geographic region of a state, an entire state, or a multi-state area. Fair share goals must reflect the recipient's determination of the level of MBE and WBE participation it would expect absent the effects of discrimination. A recipient may combine the four procurement categories into one weighted goal for MBEs and one weighted goal for WBEs.

(b) *Step 1.* A recipient must first determine a base figure for the relative availability of MBEs and WBEs. The following are examples of approaches that a recipient may take. Any percentage figure derived from one of these examples should be considered a basis from which a recipient begins when examining all evidence available in its jurisdiction.

(1) **MBE and WBE Directories and Census Bureau Data.** Separately determine the number of qualified MBEs and WBEs in the relevant geographic market for each

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procurement category from a MBE/WBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all qualified businesses available in the market that perform work in the same procurement category. Separately divide the number of MBEs and WBEs by the number of all businesses to derive a base figure for the relative availability of MBEs and WBEs in the market.

(2) **Data from a Disparity Study.** Use a percentage figure derived from data in a valid, applicable disparity study conducted within the preceding ten years comparing the available MBEs and WBEs in the relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services and supplies.

(3) **The Goal of Another EPA Recipient.** If another EPA recipient using the same, or substantially similar, relevant geographic market has set an overall goal in compliance with this rule, a recipient may use that goal as its base figure.

(4) **Alternative Methods.** Subject to EPA approval, other methods may be used to determine a base figure for the overall goal. Any methodology chosen must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of MBEs and WBEs in the relevant geographic market.

(c) *Step 2.* After calculating a base figure, a recipient must examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the fair share goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(A) The current capacity of MBEs and WBEs to perform contract work under EPA financial assistance agreements, as measured by the volume of work MBEs and WBEs have performed in recent years;

(B) Evidence from disparity studies conducted anywhere within the recipient's jurisdiction, to the extent it is not already accounted for in the base figure; and

(C) If the base figure is the goal of another EPA recipient, it must be adjusted for

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differences in the local market and the recipient's contracting program.

(2) A recipient may also consider available evidence from related fields that affect the opportunities for MBEs and WBEs to form, grow and compete. These include, but are not limited to:

(A) Statistical disparities in the ability of MBEs and WBEs to get the financing, bonding and insurance required to participate; and

(B) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent it can be related to the opportunities for MBEs and WBEs to perform in the program.

(3) If a recipient attempts to make an adjustment to its base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of another ongoing MBE/WBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

§33.406 May a recipient designate a lead agency for fair share goal negotiation purposes?

If a State, local or Indian Tribal Government has more than one agency that receives EPA financial assistance, the agencies within that government may designate a lead agency to negotiate MBE and WBE fair share goals with EPA to be used by each of the agencies. Each agency must otherwise negotiate with EPA separately its own MBE and WBE fair share goals.

§33.407 How long do MBE and WBE fair share goals remain in effect?

Once EPA has approved MBE and WBE fair share goals, they will remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share goals.

§33.408 May a recipient use quotas as part of this program?

A recipient is not permitted to use quotas in procurement under EPA financial

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assistance agreements.

§33.409 May a recipient use race and/or gender conscious measures as part of this program?

(a) Should the good faith efforts described in Subpart C or other race and/or gender neutral measures prove to be inadequate to achieve an established fair share goal, a recipient and its prime contractor are encouraged to take reasonable race and/or gender conscious action, such as price incentives, to the extent necessary to more closely achieve the fair share goal.

(b) A recipient must notify EPA in advance of any race and/or gender conscious action it plans to take. Any use of race and/or gender conscious efforts must not result in the selection of an unqualified MBE or WBE.

§33.410 Can a recipient be penalized for failing to meet its fair share goals?

A recipient cannot be penalized, or treated by EPA as being in noncompliance with this Subpart, solely because its MBE or WBE participation does not meet its applicable fair share goal. However, EPA may take remedial action under §33.105 for a recipient's failure to comply with the good faith effort requirements described in Subpart C.

§33.411 Who may be exempted from this Subpart?

(a) *General.* A recipient of EPA financial assistance agreements totaling \$100,000 or less for any single assistance agreement, or in any one fiscal year, is not required to negotiate fair share goals with EPA under this Subpart.

(b) *CWSRF and DWSRF Identified Loan Recipients.*

Alternate 1. A recipient under the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) program is not required to apply the fair share goal requirements of this Subpart to an entity receiving a loan in an amount less than \$100,000.

Alternate 2. A recipient under the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF) program is not required to apply the fair share goal requirements of this Subpart to an entity receiving a loan in an amount less than \$250,000.

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Alternate 3. A recipient under the CWSRF or DWSRF program is not required to apply the requirements of this Part, except the reporting requirements of Subpart E regarding utilization of MBEs and WBEs, to an entity receiving an identified loan in an amount less than \$250,000. **[this option, if adopted, would have to be moved to Subpart A, General Provisions.]**

§33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share goals?

The requirements in this Subpart regarding the negotiation of fair share goals will not apply to an Insular Area or Indian Tribal Government recipient until three calendar years after the effective date of this Part.

Subpart E - Recordkeeping and Reporting

§33.501 What are the recordkeeping requirements of this Part?

A recipient must maintain all records documenting its compliance with the requirements of this Part, including documentation of its, and its prime contractor's, good faith efforts and data relied upon in formulating its fair share goals. Such records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement.

§33.502 What are the reporting requirements of this Part?

MBE and WBE participation must be reported on EPA Form 5700-52A on a quarterly basis, except for recipients reporting on an annual basis: State (including Insular Areas), local and Indian Tribal Government recipients of Continuing Environmental Program Grants, and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR Part 30.

§33.503 How does a recipient calculate MBE and WBE participation?

(a) Amounts of MBE and WBE participation are calculated as a percentage of total financial assistance agreement project procurement costs, which include the match portion of the project costs, if any. For recipients of financial assistance agreements that capitalize revolving loan programs, the total amount is the total procurement

dollars in the amount of identified loans equal to the capitalization assistance agreement.

(b) If all project costs attributable to MBE and WBE participation are not eligible for funding under the EPA financial assistance agreement, the recipient may report MBE and WBE participation compared to the total eligible and non-eligible costs of the project.

(c) *Joint ventures.* For joint ventures, MBE and WBE participation consists of the portion of the dollar amount of the joint venture attributable to the MBE or WBE. If an MBE's or WBE's risk of loss, control or management responsibilities are not commensurate with its share of the profit, the cognizant award official may direct an adjustment in the percentage of MBE or WBE participation.

(d) *Central Purchasing or Procurement Centers.* A recipient must report MBE and WBE participation from its central purchasing or procurement centers.

(e) *Brokers.* A recipient may not count expenditures to a MBE or WBE that acts merely as a broker or passive conduit of funds, without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices.

(1) **Presumption.** If 50% or more of the total dollar amount of a MBE or WBE's prime contract is subcontracted to a non-DBE, the MBE or WBE prime contractor will be presumed to be a broker, and no MBE or WBE participation may be reported.

(2) **Rebuttal.** The MBE or WBE prime contractor may rebut this presumption by demonstrating that its actions are consistent with normal practices for prime contractors in its business and that it will actively perform, manage and supervise the work under the contract.

Appendix

Each procurement contract signed by an EPA financial assistance agreement recipient, including those for an identified loan under an EPA financial assistance agreement

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capitalizing a revolving loan fund, must include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.